

COHABITANT ABUSE AND DOMESTIC VIOLENCE ACT INSTRUCTION SHEET

This instruction sheet explains how to petition for a Civil Protective Order under the Utah Cohabitant Abuse Act (Utah Code Ann. § 30-6-1 through § 30-6-14).

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PERSONS ELIGIBLE TO PETITION FOR A PROTECTIVE ORDER

1. **YOU MUST BE A COHABITANT.** You may petition for a Protective Order if you are a cohabitant of the party from whom you will be requesting protection, or if you are a child of a cohabitant. You are a cohabitant if both you and the other party are age 16 or older, or married, **and**

- a. The other party is, or was, your spouse;
- b. You are related by blood or marriage to the other party;
- c. You have one or more children in common with the other party; **or**
- d. You live or have lived in the same residence with the other party.

2. **YOU MUST BE A VICTIM OF ABUSE OR DOMESTIC VIOLENCE,** or there must be a substantial likelihood of immediate abuse or domestic violence.

- a. You are a victim of abuse if the other party:
 - i. Intentionally caused you physical harm;
 - ii. Attempted to cause you physical harm; **or**
 - iii. Threatened you with physical harm.
- b. You are a victim of domestic violence if the other party:
 - i. Commits a criminal offense against you involving violence or physical harm or the threat of violence or physical harm;
 - ii. Attempts, conspires or solicits another to commit a criminal offense against you involving violence or physical harm; **or**
 - iii. Commits or attempts any of the following offenses against you:
 - assault • aggravated assault •harassment
 - stalking •telephone harassment •kidnaping
 - sexual offenses •mayhem •unlawful detention
 - criminal homicide •protective order violation
 - some offenses against property, such as burglary
 - discharge of a firearm from a vehicle
 - possession of a deadly weapon with intent to assault

3. **INTERESTED PERSONS MAY FILE ON BEHALF OF MINOR CHILDREN.** A cohabitant or any party interested in a minor may petition for a Protective Order on behalf of the minor. The Petition may be filed in Juvenile Court unless you and the other party are the parents (including adoptive and step) of the minor child.

4. **THE PETITION IS FILED IN DISTRICT OR JUVENILE COURT.** You should file your action in the District or Juvenile Court of the county:

- a. Where you reside;
- b. Where the other party resides; or
- c. Where the abuse or domestic violence occurred.

WHAT IS A PROTECTIVE ORDER?

Protective Orders prohibit contact and communication by one person against another. Protective Orders also determine the rights of parties consistent with the prohibited contact. There are five types of protective orders: Ex Parte Protective Order, Protective Order, Ex Parte Modified Protective Order, Modified Protective Order and Mutual Protective Order.

1. **EX PARTE PROTECTIVE ORDER.** This is an Order that is immediately available upon the filing of your Petition. The Order is issued without giving the other party a chance to tell his or her side of the story. The judge may grant you an Ex Parte Protective Order if it appears from your Petition that abuse or domestic violence has occurred. This Order will be valid until, after further hearing in your case, a Protective Order is obtained and served on the other party or a Protective Order is denied.

2. **PROTECTIVE ORDER.** This is an Order that may be obtained at the time of your hearing, after giving both sides a chance to speak. It replaces the Ex Parte Protective Order. The Order will be valid until the court rescinds the Order.

3. **EX PARTE MODIFIED PROTECTIVE ORDER and MODIFIED PROTECTIVE ORDER.** When an Ex Parte Protective Order or a Protective Order has been issued by the court, and the facts on which the order is based subsequently change (for instance a change of address or employment) you must petition the court to modify the original order. The court may issue an Ex Parte Modified Protective Order pending a hearing and a Modified Protective Order after the hearing.

4. **MUTUAL PROTECTIVE ORDER.** This type of Order is discouraged and will only be authorized under extraordinary circumstances. This Order will restrain both sides from abusing or contacting each other, and will make other orders consistent with mutual restraint.

5. **FOREIGN PROTECTIVE ORDER.** A protective order issued in another state may be filed in this state. This state will recognize all of the protections granted by the other state. The court clerk has the necessary forms to accomplish this filing.

RELIEF AVAILABLE IN PROTECTIVE ORDERS

Protective Orders may provide for any and all of the following demands, restraints and provisions. Some of these may not be available in an Ex Parte Protective Order.

- 1. Restrain the other party from attempting, committing or threatening to commit domestic violence against you and any minor children and family or household members;
- 2. Order the other party removed and excluded from your residence, and prohibit the other party from terminating utility services such as phones, gas, etc.;

3. Prohibit the other party from contacting, harassing, telephoning, or communicating with you;
4. Order the other party to stay away from your residence, school, place of employment, or any other place regularly occupied by you and any minor children and family or household members;
5. Prohibit the other party from purchasing, using or possessing a firearm or other weapon;
6. Award you possession of your residence, automobile and other personal property, and order a law enforcement person to assist you in regaining possession of these items;
7. Order a law enforcement officer to supervise the other party's removal of personal belongings from your residence;
8. Grant you temporary custody of your minor children;
9. Specify child visitation arrangements, including a denial of visitation or supervised visitation;
10. Restrain the other party from using drugs or alcohol prior to or during visitation;
11. Order the other party to pay child and spousal support, and your medical expenses suffered as a result of abuse;
12. Prohibit the other party from moving the minor children outside of the state; and
13. Order the other party to participate in an electronic monitoring program.

The court may authorize any other type of relief necessary to protect the safety and welfare of you, the minor children and other household members.

PROCEDURE TO OBTAIN A PROTECTIVE ORDER

1. FILL OUT THE PETITION as best as you can. There are three different types of Petitions, each depending on whether you are requesting relief for yourself, requesting modification of previous orders, or requesting relief solely on behalf of minor children. Your petition is verified, meaning that you are swearing under oath that the allegations are true. **Knowingly providing false information or statements for the purpose of obtaining a protective order may subject you to felony prosecution.** The Petition will have several blank lines for you to complete. These lines should be self-explanatory, however, the following may be helpful. If you need assistance in filling out the Petition, ask the court clerk.

- a. Complete the heading at the top of the Petition. You are the "Petitioner" and the person you wish to bring to court is the "Respondent." Documents that are filed with the court are generally public and may be disclosed to any person. You may keep your address information private if you so desire. You must complete a separate Information Sheet, which will be kept private, so that the court and law enforcement officers will have a means to contact you.
- b. Check the box that describes your relationship with the other party.
- c. Describe the acts of abuse and/or domestic violence that have been committed against you and the children and household and family members included in the Petition. Provide as much detail as possible, particularly whether injuries resulted or if weapons were used. Attach additional sheets of paper if necessary.

- d. State whether any other court cases have involved, or currently involve, you, the children, or the other party. If so, list all cases. Include both civil, criminal and juvenile actions.
 - e. The court clerk will provide you with the court hearing information to put in the Prayer section.
 - f. In the Prayer section, please check the box if you are requesting child custody, child support, spousal support, or other similar relief. If you check this box, designate the number of days that you would like this relief to be in effect. The relief can only be temporary. The time limits are intended to allow you sufficient time to begin divorce or other actions to obtain permanent orders.
 - g. List all of the children, and family and household members that should be protected by the Order. Include birthdates and recent addresses for the children.
 - h. List the address of your residence from which the other party should be removed.
 - i. List the address of all other places from which the other party should be ordered to stay away, including schools, places of employment, and other places at which you, the children and other family or household members spend considerable time.
 - j. List the essential personal possessions (including residence, automobile, toiletries, etc.) that you will need.
2. COMPLETE THE INFORMATION SHEET. The information sheet must be attached to all Protective Orders to provide law enforcement agencies with more detailed information on the Respondent. Please complete as much information as possible.
3. FILE THE PAPERS WITH THE COURT CLERK. Sign the papers in the presence of the clerk. The clerk will sign the petition to verify your signature. The clerk will then file your petition. **There is no filing fee for the petition and there will be no fees of any type throughout your case.** When the petition is filed, you will be assigned a case number and a judge. Write your case number and the judge's name on every document to be filed.
4. APPROACH THE ASSIGNED JUDGE FOR SIGNATURE ON THE EX PARTE PROTECTIVE ORDER. Take the papers to the assigned judge's in-court clerk and tell him or her that you need the judge's signature on an Ex Parte Protective Order. If court is in session try to locate another judge and explain that the assigned judge is busy. Keep trying until you find an available judge, through his or her clerk. In some instances, you may be required to wait a short period until a court recess is taken. The judge will initial all of the relief that will be included in your Order. The judge will have the discretion to deny the Ex Parte Protective Order if the judge feels that immediate relief is not necessary.
5. RETURN TO THE FILING CLERK AFTER THE EX PARTE ORDER IS SIGNED. The clerk will give you a copy of the Petition and the Ex Parte Protective Order and copies of all the other documents. Keep these copies for your records. The clerk will take the originals of all the other documents and will ensure that the Petition and the Protective Order are delivered to the local sheriff for service on the other party. The clerk will also deliver copies of the Ex Parte Protective Order to all law enforcement agencies that you request that may have jurisdiction over the protected locations designated in your petition, including your residence, place of employment, school, and other places designated by you. The filing clerk will also send a copy of the Order to the Domestic Violence Network. This Network is available to all law enforcement agencies, providing instant access for these agencies.
6. TRANSPORTATION ORDERS. If the Respondent is in jail, you will need to make arrangements to have the Respondent transported by the Sheriff to the Protective Order hearing. The clerk can assist you in obtaining a transportation order.
7. APPEAR AT THE PROTECTIVE ORDER HEARING. The time and date for your hearing will be stated on

the Petition and the Ex Parte Protective Order. **You must appear at the hearing.** Bring your evidence to this hearing. When your case is called, identify yourself. The court may hear your case at that time or it may call the entire court calendar, returning to your case after other matters are heard. When you argue your case, you should simply tell your side of the story and make clear exactly what you want. The court will allow the other party to argue, if that person is present, and will then make a ruling. You should always appear at your hearing, even if you want to drop your case. **If the Respondent has not been served at least 5 days before the hearing, you need to appear at the hearing and request an extension, otherwise the order will be dismissed at the hearing.**

8. **RETURN TO THE FILING CLERK.** If the judge grants your Protective Order, after your hearing you will be given a copy of your Protective Order. The court clerk will ensure that the Protective Order is served upon the other party, either by delivering the Order to the other party at the hearing, or by delivering the Order to the Sheriff for service. The clerk will also deliver copies of the Order to the law enforcement agencies that you request that may have jurisdiction over your residence, place of employment, school, and other places designated by you. The filing clerk will also send a copy of the Order to the Domestic Violence Network. This Network is available to all law enforcement agencies, providing instant access for these agencies.

9. **SCHOOLS.** When minor children are included in an ex parte protective order or a protective order, you may provide a copy of the order to the principals of the schools that the children attend.

10. **WRIT OF ASSISTANCE.** When a protective order awards custody of minor children and the Respondent fails to comply with that order, you may seek a Writ of Assistance from the court. A Writ of Assistance provides a law enforcement with additional authority to enforce the terms of the original protective order. If this situation occurs, you may return to the court for the forms necessary to request a Writ of Assistance.

11. **MODIFICATION.** If your circumstances change, for instance address of residence or employment change, a Petition to Modify the Protective Order should be filed to include the current information. The court has the forms to modify a protective order.

12. **DISMISSAL OF PROTECTIVE ORDER.** If a Protective Order has been issued, the parties can not modify the terms of the order without approval of the court. Therefore, your consent to actions by the Respondent that violate the order does not mean that Respondent can not be charged with violating the order. If you wish to modify the order, a petition to modify must be filed. If you wish to dismiss the action, a motion to dismiss must be filed.

ENFORCING YOUR PROTECTIVE ORDER

You should keep a copy of your Protective Order with you at all times. If a violation of your order occurs, you should:

1. Call the police. Although the police should already have a copy of your order, you should have your order ready to show them upon their arrival;
2. Make sure you get a police case number, even if no arrest is made;
3. Ask the officer to refer the case to a prosecutor for screening.

A protective order violation is a Class A misdemeanor. If there is enough proof, the violator may be prosecuted, fined, and jailed. If the violator is convicted of subsequent protective order violations, the penalties will be increased.

LAW ENFORCEMENT AGENCIES

LEGAL ASSISTANCE ORGANIZATIONS

SHELTERS/COUNSELING

CASE NO. _____

INFORMATION SHEET

(This information must be attached to the Protective Order)
(Fill out information as completely as possible. Please write clearly)

* * * * *

Respondent's name: _____

Date of birth: _____ **SSN:** _____

Address for service: _____

Best times to reach at address: _____

Alias/nicknames: _____

Respondent's Employer's name/address: _____

Other addresses (hangouts): _____

Race: _____ **Height:** _____

Weight: _____ **Age:** _____

Hair: _____ **Eyes:** _____

Special Characteristics/Tattoos/Scars/etc: _____

Make, Year, License No., and Color of Vehicles: _____

Weapons/Violent History: _____

Additional Information: _____

Law enforcement agencies to which the Protective Orders and this sheet should be delivered: _____
